IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.124 of 2007

M/s.CRN Investments (P) Ltd.
10, Karpagambal Nagar
Luz, Chennai-600 004. .. Appellant

versus

The Commissioner of Income Tax
Chennai. .. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai Bench 'A', in ITA No.1778(Mds)/2004 (Asst. Year 1995-96). dated 31.8.2006. Common order passed in ITA.No. 256, 257 & 258/2003-04 dated 17.3.2004 by the Commissioner of Income tax (Appeals) II, Chennai and Assessment Order dated 27/2/2003 in G.I.No. P.A.No. CNH-339/AAA CC 3114-A of the Deputy Commissioner of Income Tax Company Circle I(3) Chennai-34 and penalty order datetd 29/8/2003 in A.No. AAACC 3114A/Cx4-339/95-96 of the Deputy Commissioner of Income Tax, Company Circle I (3) Chennai-34.

For appellant : Mr.T.N.Seetharaman
For respondent : Mr.T.Ravikumar

JUDGMENT

(Judgment of the Court was made by CHITRA VENKATARAMAN,J.)

The appeal arises under the assessment year 1995-96. The assessee is seeking admission of this appeal on the following substantial questions of law:

(i) Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in confirming the penalty levied under Section 271(1)(c) of the Act?

(ii) Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in holding that the filing of the revised return before issue of notice under Section 148 of the Act, cannot be treated as a voluntary act, that the appellant is guilty of concealing

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

income and is liable for penalty under Section 271(1)(c) of the Act?

2. It is seen that the first assessment was completed originally on 1.9.1999 under Section 147 of the Act. Subsequently, the assessee filed revised Returns withdrawing the claim for depreciation. It is seen that the assessee claimed 100% depreciation originally. The assessment was reopened under Section 147 of the Act. It is stated that a survey under Section 133A was carried out by the Department in the case of M/s.Bellari Steels & Alloy Ltd., Bellari on 1.6.2000. The said company obtained steel rollers on lease basis. The lease transaction was a tripartite transaction involving the manufacturer/ supplier, lessor, the assessee herein and the lessee, namely, Bellari Steels & Alloy Ltd. On investigation, it was seen that the lessee had not produced the original delivery challans in all the cases. No documents were produced to obtain the steel rolls on lease. The enquiry conducted showed that the suppliers never supplied any steel roll to Bellary Steel & Alloy Ltd.; that the bills were raised to facilitate finance from credit institutions. On the basis of the materials, the Department came to the conclusion that the alleged lease transaction was false and a make-believe one, to enable BSAL to obtain finance and the present assessee to claim 100% depreciation.

3. In its letter dated 16.5.2001, annexed to the revised Return filed, the assessee claimed that they had carried out this transaction in good faith. On coming to know the result of the investigation and the information given by the Revenue, they were withdrawing the claim for depreciation. However, they stated that there were no records to reveal the dishonesty of the party. The assessee computed the taxable income and paid tax thereon; however, did not quantify the interest payable under Section 234A, 234B and 234C, nor paid the said interest of the self-assessment tax payable. On further analysis of the facts, the Revenue completed the assessment and held that the assessee had full knowledge of the transaction as not a genuine one and that the sham transaction was mutually beneficial; that the assessee had full knowledge about the transaction and hence, penalty proceedings were initiated under Section 271(1)(c) for concealment of income and for furnishing of inaccurate particulars of income.

4. The assessee resisted the claim that they were not aware of the forged documents and contended that they had not concealed the income nor furnished any inaccurate particulars. They also brought to the attention of the authorities that they filed revised returns voluntarily withdrawing the claim for depreciation once they came to know that the lease transaction was not in order. Consequently, they prayed for dropping the proceedings.

5. The Assessing Authority rejected the claim of the assessee. Having regard to the fact that the revised Return was filed after the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Department had established the bogus nature of the transaction, placed reliance on the decision reported in 253 ITR 203 (CIT Vs. R.SADAYAPPAN), confirmed the levy of penalty, holding that the assessee had concealed the income and was guilty of concealment of income and furnishing of inaccurate particulars of income, within the meaning of Section 271(1)(c) read with Explanation (1) thereof.

6. Aggrieved, the assessee filed an appeal before the Commisioner (Appeals). By order dated 17.3.2004, the first appellate authority held that there was no dispute regarding the fact of bogus transaction. It also found that the assessing authority had cited reasons in its order in paragraphs 5.2 and 5.3 for concluding that the assessee was aware of the bogus transaction. The appellate authority further noted that the assessee had found that lessee had committed a fraud which had the effect of huge financial liability in the form of tax, interest and penalty coupled with threat of prosecution under the Income Tax Act, but yet had not taken any action against BSAL and not even an attempt had been made. The assessee was a major beneficiary and it was a party to the bogus transaction. The investigation conducted by the Revenue clearly proved the bogus transaction. In the above circumstances, the appellate authority rejected the plea of the assessee that they are unaware of the bogus transaction.

7. Going by the law laid down by this Court and the Supreme Court reported in 251 ITR 99 (K.P.MADHUSUDAN Vs. CIT), the appellate authority held that the assessee was guilty of concealment of income and furnishing of inaccurate particulars. Thus, it confirmed the penalty for the assessment year 1995-96.

8. On further appeal by the assessee, the Tribunal noted that admittedly the assessee had an inspection of the steel rollers in the lessee's premises. The fact was that there was no steel rollers supplied by the manufacturers. The assessee had full knowledge about the falsity of these transactions for which no depreciation could be claimed. Noting the fact that the assessee had not taken any action against the lessee, the Tribunal held that the conduct of the assessee showed that it was aware of the non-existence of steel rollers and that the false claim for depreciation was made consciously. Hence, the filing of the revised Returns could not be treated as a voluntary act of the assessee. Hence, applying the decision of the Supreme Court reported in 251 ITR 99 (K.P.MADHUSUDAN Vs. CIT), the Tribunal held that "In the case before us, the assessee has not been able to prove that there was no negligence or fraud on the part of the assessee. As a matter of fact, the assessee entered into an agreement fraudulently with BSAL with a view to claim 100% depreciation on steel rollers and therefore, he is guilty of concealing income and had made liable for levy of penalty under Section 271(1)(c) of the Act. " In the circumstances, the Tribunal upheld the order of the appellate authority.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

9. Aggrieved of this, the assessee has come on appeal under Section 260A of the Income Tax Act, seeking admission of this case.

10. Learned counsel for the appellant submitted that the Tribunal erred in its finding that the appellant was not able to disprove the allegation of fraud on its part. He submitted that it was a victim of the dishonest attitude of the lessee and hence had gone for withdrawal of the claim for depreciation on its own accord; consequently, the assessee could not be attributed motive that it had knowledge on the definite character of the transaction. He also submitted that there was no material before the Tribunal to hold that the assessee made a false claim knowingly. In the circumstances, he prayed for reversing the order.

11. We do not find any basis to accept this plea of the assessee herein. As a final fact finding authority, the Tribunal has clearly found that the claim of the assessee for depreciation was bogus on the non-existing assets. Noting the conduct of the assessee, the Tribunal held that the appellant had deliberately claimed its unmerited deduction. Consequently, in the face of the said fact that the revised return thus comes consequent on a search, it confirmed the finding that the assessee was guilty of concealment of income by furnishing inaccurate particulars. Learned counsel for the assessee could not get over this finding, based on the materials available on hand. Learned counsel could not deny the fact that the revised return itself was consequent on the information in possession of the Revenue.

In the aforesaid factual backdrop, the conclusion is factual, giving rise to no questions of law. Considering the limited scope under Section 260 of the Income Tax, Act, we do not find any justification to disturb the order of the Tribunal. Consequently, the appeal stands dismissed. There will, however, be no order as to costs.

ksv

Sd/-
Assistant Registrar,

/true copy/

Sub Assistant Registrar.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To:

1. The Assisant Registrar of Income Tax Apellate
Tribunal III Floor, Rajaji Bhavan, Besant Nagar,Chennai
2.The Commissioner of Income Tax
Chennai.
3. The Commissioner of Income tax (Appeals) III Chennai.
4. The Deputy Commissioner of Income Tax,
Company Circle I (3) Chennai.

SSV (co)
sg 12/3/07

Tax Case (Appeal) No.124 of 2007
20.02.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/